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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-192019

DATE: July 6, 1978

MATTER OF: Maryland Machine Tool Sales

DIGEST:

1. Protest filed more than 10 days after basis of protest is known or should have been known is untimely and will not be considered on the merits.
2. Failure of a military department to give notice to all potential competitors that they may be in direct competition with United Kingdom firms does not invalidate procurement.

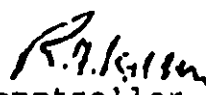
Maryland Machine Tool Sales (Maryland Machine) has protested the Navy's award of contracts under the following solicitations: (1) N00600-77-B-1668; (2) N00600-77-B-1697; (3) N00600-77-B-1775; and (4) N00600-78-B-0987. The protester states that it received notice of and the reasons for its bids being rejected on solicitations (1)-(3) on October 4, 1977, November 16, 1977, and October 28, 1977 respectively. Our Bid Protest Procedures provide that "bid protests shall be filed [received by our Office] not later than 10 [working] days after the basis for protest is known or should have been known, whichever is earlier." 4 CFR 20.2(b)(2)(1977). Protester claims that it was not advised of our Bid Protest Procedures and that therefore the timeliness rules should not apply. While Maryland Machine may not have been aware of our Bid Protest Procedures and their time constraints, this lack of knowledge is not sufficient justification for considering an otherwise untimely protest. Our Bid Protest Procedures have been published in the Federal Register (40 Fed. Reg. 17979, April 24, 1975), and protesters such as Maryland Machine are charged with constructive notice of their provisions. Waslex Machinery Corporation, B-190726, March 22, 1978, 78-1 CPD 227. Since the protests on the first three

solicitations were not filed until May 24, 1978, the, are untimely and will not be considered on the merits.

Regarding the fourth solicitation, which was timely protested, the protester states the solicitation was defective for failing to give notice of potential foreign source competition. This defect, according to the protester, renders invalid the award of the contract to the low bidder which is a United Kingdom (U. K.) firm. In Crockett Machine Company, B-189380, February 9, 1978, 78-1 CPD 109, however, we held that a Department of Defense agency's failure to notify potential competitors that they would be in direct competition with U. K. firms did not affect the validity of the procurement. The holding was based on the fact that the Secretary of Defense waived (under a Determination and Finding dated November 24, 1976) the Buy American Act with respect to Defense items manufactured in the U. K. We stated that such waiver did not depend on a given Department of Defense procuring activity's first having some reason to suspect that an item manufactured in the U. K. might be offered. Accordingly, the Navy's failure in this case to inform bidders of the potential competition from U. K. firms (assuming arguendo that the Navy actually knew that such competition was possible) does not render the solicitation invalid.

The protester also raises several "general" questions as to the conduct of the protested procurements. They pertain, however, to solicitations (1)-(3) and will not be considered on the merits.

The protest is denied.


Deputy Comptroller General
of the United States